PB-217 732

DIGEST OF WATER POLLUTION CONTROL LEGISLATION ... ALABAMA

Public Health Service
Washington, D. C.

September 1958

DISTRIBUTED BY:

NTIS

National Technical Information Service
U. S. DEPARTMENT OF COMMERCE
5285 Port Royal Road, Springfield Va. 22151

TD 427
PB 217 732
LIBRARY
SANITARY ENGINEERING CENTER
CINCINNATI, OHIO

Digest of WATER POLLUTION CONTROL LEGISLATION ... Alabama

Reproduced by
NATIONAL TECHNICAL
INFORMATION SERVICE
U.S. Department of Commerce
Springfield VA 22151

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service

16

Section 3 of the Federal Water Pollution Control Act (33 U.S.C. 466b) directs the Public Health Service to "encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention and control of water pollution."

This Digest is one of a series prepared by the Public Health Service as a service to the States and others interested in these objectives. Cooperation of State officials in the preparation of these digests is gratefully acknowledged.

September 1958

DIGEST OF ALABAMA WATER POLLUTION CONTROL LEGISLATION

I. GENERAL STATEMENT

The Alabama Water Improvement Commission, as established in 1953, has specific and extensive responsibility for controlling the pollution of waters of the State and is expressly directed to supervise the administration of all laws relating to pollution of the waters of the State (Code of Alabama, 1955 Supp., title 22, sec. 140 (3)(f)). [1/] The importance of the improvement and conservation of the ground and surface waters of Alabama is recognized by the statute giving the Water Improvement Commission comprehensive authority for controlling water pollution in the State (Title 22, 1955 Supp., sec. 140 (1)). The Commission is responsible for controlling the "quantity" of pollution existing before August 25, 1949, if such pollution creates a health hazard, and for controlling new or increased pollution since that date (Title 22, 1955 Supp., sec. 140 (3)(g)). The Commission may control and abate this pollution by administrative orders (subject to court review) to persons responsible for the pollution, and by regulating the conditions under which sewage, industrial, and other wastes may be discharged into the waters of the State (Title 22, 1955 Supp., sec. 140 (3) (g-k)). The authority of the Commission to control and abate water pollution is limited, however, to what

---

1/ The present Commission is the successor to the Water Improvement Advisory Commission, set up largely as a study and advisory group in 1947 and given additional authority in 1949 including some enforcement powers and authority to issue permits for the discharge of wastes into Alabama waters. (No. 523 General Acts of Alabama, 1947, as amended, No. 460 Alabama Laws 1949).

The citations in this digest refer to titles and sections of the Code of Alabama, 1940 edition, and the 1955 cumulative Supplement of the Code unless otherwise noted.

is reasonable, scientifically possible, economically feasible, and phyically attainable from a practical standpoint (Title 22, 1955 Supp., sec. 140 (3), 140 (3)(b); 140 (3)(f); 140 (3)(j); 140 (3)(n)).

The Alabama State Board of Health also has a number of statutory duties which pertain directly to the control of water pollution in the State. The Board of Health is responsible for the general supervision and control of all water supplies and waterworks in the State insofar as purity, potability, wholesomeness, and physical quality of waters furnished may affect the public health or comfort (Title 22, sec. 117). In performing these functions, the Board exercises control over water supplies and waterworks for human consumption and domestic uses, and its orders for maintaining standards of water purity are directed to water suppliers rather than to persons or agencies causing water pollution (Title 22, secs. 118 120). If pollution of drinking water or conditions likely to bring about such pollution are found, the Board of Health is directed to improve or correct such conditions (Title 22, 7(5)). The responsibility of the State Health Board for assuring that pure wholesome water is supplied and its powers in supervising and controlling the water supply for that purpose are coextensive with and independent of, but reinforce the authority of the Water Improvement Commission to abate pollution. The State Department of Public Health is also expressly directed to inspect, investigate and do such other things as may be necessary to cooperate with the Water Improvement Commission in carrying out the statutory duties of the latter commission (Title 22, 1955 Supp., sec. 140 (3)(o)).

The oil and gas board is directed to prevent the pollution of fresh water supplies by oil, gas, or salt water (Title 26, 1955 Supp., sec. 179 (32-1)).

II. ADMINISTRATIVE ORGANIZATION

A. Water Improvement Commission

1. Composition

The Water Improvement Commission is composed of 15 members, as follows: The State Health Officer, who is Chairman ex-officio; Director of the Department of Conservation, who is Vice Chairman ex-officio; Commissioner of the Department of Agriculture and Industries; the State Geologist; three members representing respectively municipal government, county government and wildlife conservation; six members representing respectively the mining, textiles, chemical, lumbering, paper and metals industries of the State; one member each from the University of Alabama and from the Alabama Polytechnic Institue. The industry representatives are appointed by the Governor from panels of nominees submitted by their trade associations. Representatives of municipal government, county government and wildlife conservation are appointed by the Governor from panels of nominees submitted by the Alabama League of Municipalities, the Association of County Commissioners of Alabama and the Alabama Wildlife Federation, respectively. The members from the Universities are designated by the dean of the school of engineering of the University of Alabama and by the dean of the school of agriculture of the Alabama Polytechnic Institute.

The Commission is an independent agency. The State Department of Public Health is required to make inspections, conduct investigations and do such other things as may be necessary to cooperate with the Commission in carrying out the provisions of the act. The act creates an executive committee consisting of the following five members of the Commission: The State Health Officer who is chairman, the director of the Department of Conservation, the municipal government representative, and two members

representing industry, who are appointed by the Chairman of the Commission. The Executive Committee acts for the Commission when it is not in session and possesses the powers and jurisdiction of the Commission which are delegated to it by the Commission (Title 22, 1955 Supp., 140 (2)).

2. Powers and Duties

a) Development of comprehensive program; Setting standards for limits of pollution and quality of water

The Commission is specifically authorized to conduct independently and in cooperation with others, studies, investigations, research, and to prepare, or in cooperation with others, prepare a program or programs which are related to the purity and conservation of the waters of the State or to the treatment and disposal of sewage, industrial wastes, or other wastes which may be the causes of pollution. These programs are intended to result in the reduction of pollution of the waters of the State according to the conditions and particular circumstances existing in the various communities throughout the State (Title 22, 1955 Supp., sec. 140 (3)(a)).

It is the duty of the Commission to conduct surveys with respect to the pollution of any streams in the State and to establish standards for recognized limits of pollution. Such surveys, determinations and recommendations are to reflect what is scientifically possible, economically feasible, and physically attainable from a practical standpoint. It is also the duty of the Commission to establish standards of quality for any waters. The standards of quality are to be related to the reasonable and necessary use of the waters, in the public interest. In establishing standards of quality the Commission is to recognize that because of variable factors and varied use of waters, no single standard of treatment and no single standard of quality are practical and that the degree of treatment of sewage and industrial waste must take into account the present and future uses and

general policies relating to existing or proposed future pollution which are necessary to accomplish the purposes of the act (Title 22, 1955 Supp., sec. 140 (3)(b),(g)).

b) Issuance of permits and review of plans and specifications

The Commission issues permits, after examining applications, plans, specifications therefor, to discharge sewage, industrial waste, and other waste, subject to control under the act, into the waters of the State. Each permit specifies the conditions under which discharge is permitted. The quantity of pollution existing in an effluent before August 25, 1949, is subject to the control of the Commission if it creates a health hazard. Any increase in the quantity of pollution in an effluent since that date and all pollution from new sources since that date are subject to the control of the Commission (Title 22, 1955 Supp., sec. 140 (3)(g-h)). New or increased pollution since the date of the act may not be discharged without a permit and a permit may be required to continue discharging any pollution which originated or increased between August 25, 1949, and August 31, 1953 (Title 22, 1955 Supp., sec. 140 (3)(g-h)).

c) Enforcement

The Commission is authorized to issue orders directing persons or owners responsible for pollution to secure such operating results toward its control within a reasonable time as the Commission may prescribe. If such results are not secured within the specified time, the Commission may direct the owner to use or adopt, within a specified time, such designated system or devices as are scientifically possible, economically feasible and physically attainable from a practical standpoint. Orders of the Commission become final and conclusive after 30 days unless before the expiration of that period the party aggrieved files a sworn petition asking for an

administrative review thereof. Orders of the Commission issued after hearing and administrative review become final and conclusive upon the expiration of 30 days unless the party in interest or any intervenor whose rights are prejudiced by said order files before the end of the 30 day period, an appeal to the circuit court. The action on appeal is tried de novo on the equity side of the circuit court, and the court determines whether orders of the Commission are lawful, and whether they are reasonable or unreasonable, require only what is scientifically possible, economically feasible, and physically attainable from a practical standpoint, and whether a polluted condition of any water or waters exists or is about to exist as set forth in the order under consideration. The court may affirm, modify or wholly set aside an order of the Commission, and when an appeal has been taken from an order, it is final and conclusive only when the court so determines. The judgment of the circuit court may be appealed by either party to the Supreme Court of Alabama under equity procedure (Title 22, 1955 Supp., sec. 140 (3)(j)(m)(n)).

Upon complaint by the Commission, any person found guilty of wilfully violating the conditions of a permit issued for the discharge of pollution or of any order of the Commission which has become final and conclusive may be guilty of a misdemeanor (Title 22, 1955 Supp., sec. 140 (3)(p)). There does not appear to be any specific statutory provision for summary action by the Commission in cases of emergency.

d) Conduct of studies, investigations and research; Reports

The Commission is directed to study and investigate all problems concerned with the improvement and conservation of the waters of the State. It is authorized to conduct independently and in cooperation with others, studies, investigations, and research on this general subject. It may

conduct surveys with respect to the pollution of any streams in the State, and may propose remedial measures insofar as practical means are available for abatement of pollution. It is required to render a formal report biennially to the Governor and each succeeding regularly assembled session of the legislature, of its activities and progress, including any recommendation for amendment of the act (Title 22, 1955 Supp., sec. 140 (3)(a), (b), (d)).

e) Cooperation with other public and private agencies

The Commission is specifcially authorized, in connection with its duties to make studies and investigations, to cooperate with any private or public agency, including Federal agencies, in the conduct of experiments, investigations, and research, and to receive money which any such agency may contribute as its share of the cost under a cooperative arrangement. Such money is to be used only for the purposes for which it is contributed and any unexpended balance remaining after the conclusion of the experiments, investigations, or other uses for which the funds were contributed remains to the credit of the Commission, unless the terms of the grant or gift requires its return. It is the further duty of the Commission to cooperate and to advise with industries and municipalities in connection with the control of waste and other deleterious matter of pollutive nature and to make available to industries and municipalities the benefits of its studies and findings (Title 22, 1955 Supp., sec. 140 (3)(a); 140 (3)(e)).

f) Administrative powers

The Commission is authorized to make rules and regulations for carrying out the provisions of the act (Title 22, 1955 Supp., sec. 140 (3)(i)).

The Commission may hold hearings to obtain information, subpoena witnesses, and require the production of all pertinent information, except that no person or industry may be required to disclose any secret formulae, processes, or methods. The act provides for the payment of witness' fees for travel and attendance at hearings, such fees to be the same as for witnesses before courts of record. Any judge of a court of record may, upon application of the chairman or acting chairman of the Commission, compel the attendance of witnesses, the production of books and papers, and the giving of testimony. Commission members, employees, and agents are authorized to enter upon property for the purpose of collecting information at any reasonable time (Title 22, 1955 Supp., sec. 140 (3)(c)).

The Commission's authority to issue orders directing persons responsible for pollution to secure operating results to control the pollution, and if such results are not secured within a specified time to direct the owner to use or adopt such designated system, is discussed above under Enforcement Powers. A hearing before the Commission is required upon request therefor by one aggrieved by an order of the Commission if request for review is filed within 30 days after service of notice (Title 22, 1955 Supp., sec. 140 (3)(j), (m), (n)).

Public notice must be given of hearings which are required to be held before any standards of quality for any waters are established by the Commission (Title 22, 1955 Supp., sec. 140 (3)(g)).

3. Exemption from operation of act

The "quantity" of pollution existing in an effluent before August 25, 1949, is subject to the control of the Water Improvement Commission only if such pollution creates a health hazard (Title 22, 1955 Supp., sec. 140 (3)(g)).

4. Preservation of existing rights and remedies

The act establishing the Alabama Water Improvement Commission is intended to supplement existing law, and no part of the act is to be construed as repealing any existing laws specifically enacted for the protection of health or the protection of fish and game of the State (Title 22, 1955 Supp., sec. 140 (5)).

5. Statement of policy; Severability clause

The improvement and conservation of the ground and surface waters of the State of Alabama are declared to be of utmost importance. However, existing water conditions of the State and the right of municipalities, industries, and individuals to the reasonable use of such waters in order to promote the continued growth and development of the State in industry, agriculture, health, and conservation of natural resources are also recognized (Title 22, 1955 Supp., sec. 140 (1)).

The act contains a severability provision (I Acts of Alabama, No. 463, sec. 3, p. 578 (1953)).

III. THE STATE BOARD OF HEALTH

A. Composition

The State Board of Health is the State Medical Association. The State Board of Censors of the Medical Association is the State Committee of Public Health, when acting as such, with the Governor as a member and ex-officio Chairman. When the State Board of Health is not in session, the State Committee of Public Health acts for the Board, and when the Committee is not in session the State Health Officer, as executive officer of the Department of Health, acts for the Board and the Committee (Title 22, secs. 1 - 3). The health officer is elected by the State Board of Health (Title 22, 1955 Supp., sec. 9).

B. Powers and duties

1. Standards of water purity

The State Board of Health is responsible for the general supervision and control of all water supplies and waterworks in the State insofar as purity, potability, wholesomeness, and physical quality of waters furnished may affect the public health or comfort, and is authorized, in this connection, to examine and investigate sources of supply of waterworks systems, methods of filtering, treating, and delivering water to consumers, and to consult and advise municipal authorities and other persons engaged in waterworks installation and improvement as to appropriate sources of supply and methods of assuring purity (Title 22, sec. 117). A separate statutory provision authorizes the Board to examine the source of supply, tanks, reservoirs, pumping stations, and avenues of conveyance of drinking water, and whenever these waters are found polluted, or conditions are discovered likely to bring about their pollution, to take proper steps to improve or correct conditions (Title 22, sec. 7 (5)).

As a part of controlling purity, potability, wholesomeness and quality of all water supplies, persons, firms, public and private corporations, and any other agency furnishing water for human consumption or domestic use is required to deliver every month (or oftener, if necessary in the opinion of the State Board) to the State Board Inspection Laboratory, samples of water furnished to consumers (Title 22, 1955 Supp., sec. 118). An analysis (bacteriological, sanitary or chemical) of each sample is made; the analysis is recorded and furnished to authorities of the municipalities using such water and to owner of waterworks furnishing the water (Title 22, sec. 119).

2. Issuance of permits and review of plans and specifications

The State Board issues permits to supply water for human consumption or domestic uses, and existing waterworks or systems or sources of supply may not be modified or altered without permit from and compliance with standards established by the State Board. However, except upon formal complaint filed with the State Board of Health no permit is necessary for the mere extension of water pipes for distribution of water, nor shall a private property owner supplying water solely for use on his own premises for less than 50 persons be required to obtain a permit from the State Board to furnish water for human consumption unless there is an industrial camp, hotel, temporary or permanent resort, using such water (Title 22, secs. 120, 121).

In issuing permits for construction of a system of water supply or for change in an existing supply, the health board is required to investigate proposed or existing water supplies and waterworks and plans and specifications therefor. Administrative hearings may be held as a part of investigations, and orders are issued by the Board if it determines as a fact that water being supplied or to be supplied is such that under all circumstances and conditions the existing or proposed works, systems, plant, or water supply or proposed modifications are not suited to the production and delivery of healthful, pure and wholesome water (Title 22, secs. 122-129).

3. Enforcement

The Board of Health may issue to persons required to hold permits to supply water whatever orders are necessary to secure a continuous supply of pure, wholesome, potable, and healthful water, and such orders may prohibit the use of a water supply or any modification, construction, or

operation of a waterworks, system, or plant (Title 22, sec. 125). Administrative hearings before the Board of Health or an examiner appointed by it may be held in connection with investigations before the issuance of orders or permits but there is no statutory provision for such hearings after the issuance thereof (Title 22, sec. 124).

Orders of the Board of Health relating to water supplies and waterworks are enforced by injunction and violation may result in criminal prosecution. Violation of an order of the Board of Health is a public nuisance dangerous to health and may be abated summarily or otherwise. The continued existence of a violation of the Board's order for each and every day beyond the time stipulated for compliance with the order is a separate and distinct offense. Anyone dissatisfied with an order of the Board or by allowance or denial of a permit may appeal to a court of competent jurisdiction within 30 days after an order is made or action is taken on the permit application, and the court may approve, modify, or set aside the action of the Board (Title 22, secs. 131, 135-139).

4. Conduct of studies, investigations and research; Cooperation with other agencies

The State Health Board has general authority to investigate the causes, modes of propagation, and means of prevention of diseases and specific authority to investigate the sources of supply of waterworks systems and methods of filtering, treating, and delivering water to consumers (Title 22, secs. 7, 117). The Board is required to submit an annual report to the Governor with recommendations as to needed health legislation (Title 22, secs. 7, 11, 117).

The Board acts as an advisory board to the State in all medical matters and matters of sanitation and public health, and exercises super-

vision and control over county boards of health and county health officers (Title 22, secs. 7 (7), (8)). The State Department of Health is directed by statute to cooperate with the Water Improvement Commission by inspections, investigations, and other necessary ways in carrying out the provisions of the Water Improvement Commission Act (Title 22, 1955 Supp., sec. 140 (3) (o)).

5. Administrative powers

The Board is authorized to adopt and promulgate rules and regulations providing proper methods and details for administering the health and quarantine laws of the State, which rules and regulations have the force and effect of law (Title 22, sec. 7 (6)). Inspectors for the State Board have full power and authority to enter, at reasonable times, any and all places in order to make investigations in determining whether any provisions of the law regarding water supplies and waterworks are being violated (Title 22, sec. 128).

Hearings before the Board or an examiner appointed by it may be held in connection with any investigation of proposed or existing public water supply system after notice to the owner or operator thereof. Testimony at such hearings is under oath (Title 22, sec. 124).

The holder of any permit to supply water may be required by the Board to furnish a complete report of the condition and operation of a water supply system, the report to be made by a competent person designated by the Board at the sole cost and expense of the permittee (Title 22, sec. 129).

IV. MISCELLANEOUS STATUTORY PROVISIONS RELATING TO WATER POLLUTION

Depositing dead animals and fowls in running streams or in a municipal or private water supply is forbidden, as is depositing a "nauseous substance" in a water supply (Title 22, secs. 132, 133).

Depositing poisonous substances in public or private streams or bodies of water in catching or killing fish or in attempting to do so is unlawful (Title 8, 1955 Supp., secs. 69 (1), 79).

Persons engaged in construction work are required to drain all borrow pits, cuts, and fills likely to impound water which is dangerous to the public health (Title 22, sec. 134).